PUBLIC SERVICE EMPLOYEE RELATIONS BOARD

1988/89

annual report

PUBLIC SERVICE
EMPLOYEE RELATIONS BOARD

ANNUAL REPORT
for the
FISCAL YEAR ENDING MARCH 31, 1989

PUBLISHED BY AUTHORITY OF THE
PUBLIC SERVICE EMPLOYEE RELATIONS BOARD
EDMONTON, ALBERTA

To Her Honour
W. Helen Hunley
Lieutenant Governor of the Province of Alberta

May it please your Honour,

On behalf of the Public Service Employee Relations Board, I respectfully submit to you the Annual Report for the period from April 1, 1988, to March 31, 1989, pursuant to the requirements of Section 77 of the Public Service Employee Relations Act, Revised Statutes of Alberta, 1980, Chapter P-33 and amendments thereto.

Respectfully submitted,

Ken Rostad
Attorney General

To The Honourable Ken Rostad
Attorney General

Sir:

I have the honour to submit to you, on behalf of the Public Service Employee Relations Board, the Annual Report of the Board for the fiscal period April 1, 1988, to March 31, 1989.

Respectfully yours,

Catherine A. Fraser
Chairman

90-05500/

personnel

PUBLIC SERVICE EMPLOYEE RELATIONS BOARD

Chairman — Catherine A. Fraser

Alternate Chairman — Thomas W. Wakeling

Members —

Thomas K. Biggs

Jack Dyck

William Kondro

A. Roderick Turpin

Executive Director — John F. Elsinga

Secretary — Gordon P. Procinsky

ANNUAL REPORT
OF THE
PUBLIC SERVICE EMPLOYEE RELATIONS BOARD

FOR FISCAL PERIOD ENDING MARCH 31, 1989

introduction

The Public Service Employee Relations Act, Revised Statutes of Alberta 1980, Chapter P-33 came into force on September 22, 1977, upon proclamation by Order in Council 965/77. It was amended in 1983 and again in 1985.

Section 17 of the statute embraces the right of an employee to be a member of and to participate in the lawful activities of a trade union, and to bargain collectively with an employer through a bargaining agent. The Act prescribes final and binding arbitration for the resolution of collective bargaining disputes and prohibits strike or lockout action. An employer and bargaining agent may at any time in their collective bargaining make joint application for the appointment of a mediator to assist in settling their dispute.

The legislation also requires that every collective agreement contain a procedure for the resolution of differences between the contracting parties as to the interpretation, application, operation or alleged contravention of their collective agreement.

The Public Service Employee Relations Act describes in considerable detail the basis upon which employees are to be included in or excluded from a bargaining unit of employees. In that regard Sections 9 and 21 of the Act confer authority upon the Public Service Employee Relations Board to make final and binding determinations where the bargaining agent and employer are unable to settle the matter of employee status for collective bargaining purposes.

Section 48 of the Act precludes the referral of certain items in dispute between the bargaining parties to arbitration. The Public Service Employee Relations Board has the responsibility and authority under the statute to make such determinations, a function that is an integral part of the Board's activities with respect to each application it receives seeking the establishment of an arbitration board for the resolution of a collective bargaining dispute.

Part 8 of the Act prohibits employees, employers, trade unions and persons acting on their behalf from engaging in certain activities commonly referred to as unfair practices. In this part of the statute, the Public Service Employee Relations Board is given authority to inquire into complaints alleging such unfair practices and to impose remedial action when satisfied upon inquiry as to the substance of the complaint.

overview

The 1988/89 reporting period was characterized by effective bargaining between employers and bargaining agents within the jurisdiction of the Public Service Employee Relations Act. The statistics found elsewhere in this report will disclose for example a significant decrease in the number of applications made to the Public Service Employee Relations Board requesting the establishment of an arbitration board to resolve a collective bargaining dispute. In addition, mediation efforts by persons appointed by the Board to assist the negotiating parties in their bargaining were especially productive in achieving contract settlements.

As in the previous reporting period, the major element of the Board's caseload during the year under review focussed on determinations as to the bargaining unit status of persons involved in public sector employment in the Province. Applications made to the Board for such determinations engage and require the interpretation of Sections 9 and 21 of the relevant statute. In a number of the applications processed, the Board encouraged the affected bargaining agent and employer to adopt the use of a "test-case" concept to facilitate the determination procedure.

During the early part of the reporting period, the Board was also called upon to process a number of applications for the certification of a bargaining agent in circumstances where the applicant sought to displace an incumbent bargaining agent as the representative of affected employees. In such instances, it is generally the practice of the Board to conduct a secret ballot vote to establish the wishes of the affected employees as to their bargaining representation.

This year again, the Board experienced an increase in the number of applications requesting the appointment of persons to chair adjudication boards established to resolve differences between bargaining agents and employers as to the interpretation, application or operation of their collective agreements.

application

The Public Service Employee Relations Act governs collective bargaining and related matters for more than 55,000 public service employees and their employers within the Province of Alberta. The majority of those employees are employed directly by the Crown in right of Alberta in the various departments of the provincial government's administration. They are represented by The Alberta Union of Provincial Employees as their bargaining agent, and function under a common Master collective agreement and twelve supplementary contracts, structured on occupational groupings.

Other employers and their employees to whom the Public Service Employee Relations Act applies include the following:

Corporations
- Alberta Mortgage and Housing Corporation
- Alberta Oil Sands Technology and Research Authority
- Alberta Opportunity Company
- Hail Crop Insurance Corporation

Commissions
- Alberta Alcoholism and Drug Abuse Commission
- Alberta Petroleum Marketing Commission
- Alberta Racing Commission

Universities (academic staff excluded)
- Athabasca University
- University of Alberta
- University of Calgary
- University of Lethbridge

Colleges (academic staff excluded)
- Alberta College of Art
- Banff Centre
- Fairview College
- Grande Prairie Regional College
- Grant MacEwan Community College
- Keyano College
- Lakeland College
- Lethbridge Community College
- Medicine Hat College
- Mount Royal College
- Olds College
- Red Deer College

Technical Institutes (academic staff excluded)
- Southern Alberta Institute of Technology
- Northern Alberta Institute of Technology
- Westerra Institute of Technology

Hospitals	— Alberta Cancer Board — Alberta Children's Provincial General Hospital — Charles Camsell Provincial General Hospital — Foothills Provincial General Hospital — Glenrose Rehabilitation Hospital — The Mental Health Hospital Board, Edmonton — The Mental Health Hospital Board, Calgary — University Hospitals Board
Boards	— Teacher's Retirement Fund Board — Workers' Compensation Board — Alberta Liquor Control Board (selected offices or departments only)
Councils	— Alberta Research Council

administration & personnel

The Public Service Employee Relations Board consists of a Chairman, Alternate Chairman and four members, all of whom participate in their respective capacities on an ad hoc basis. Their current appointments will all expire on November 4, 1989. The Board is served by four full time employees, all located in the Board's Edmonton office.

On March 23, 1989, the Board's Chairman, Catherine A. Fraser, Q.C. was appointed as a Justice of the Court of Queen's Bench of Alberta.

judicial review — cases

Decisions of the Public Service Employee Relations Board which were the subject of judicial review during the reporting period include the following:

1. The Board of Governors of Medicine Hat College,
   Medicine Hat, Alberta,
   (Applicant — Respondent)
   and
   The Alberta Union of Provincial Employees,
   Edmonton, Alberta
   (Applicant — Respondent)
   and
   The Public Service Employee Relations Board,
   Edmonton, Alberta
   (Respondent)

On March 19, 1987, the Board issued a decision and reasons reflecting its determinations as to the arbitrability of certain items claimed in dispute and arising as a result of an application to the Board to establish an arbitration board to resolve a collective bargaining dispute.

By applications filed on March 30, 1987 and April 8, 1987, the Employer and Union both requested the Court of Queen's Bench to quash certain parts of the decision of the Board. Concurrently, both parties requested the Board to reconsider and vary or correct the affected portions of the March 19, 1987 decision of the Board.

The applications for judicial review were subsequently heard and dismissed by the Court of Queen's Bench in a judgement issued on June 6, 1987.

An appeal from that judgement taken by the Alberta Union of Provincial Employees was dismissed on June 8, 1988, by the Alberta Court of Appeal. (PSERB Ref. 140-065-502)

2. The Board of Governors of Lethbridge Community College,
   Lethbridge, Alberta
   (Applicant — Respondent)
   and
   The Alberta Union of Provincial Employees,
   Edmonton, Alberta
   (Applicant — Respondent)
   and
   The Public Service Employee Relations Board,
   Edmonton, Alberta
   (Respondent)

On March 20, 1987, the Board issued a decision setting out its determinations as to the arbitrability of a large number of items claimed in dispute by the Union and Employer, as part of the processing of an application for the establishment of an arbitration board. On April 8, 1987 and April 14, 1987 respectively, the Union and Employer each applied to the Court of Queen's Bench for orders quashing certain parts of the Board's decision. In addition, both applied to the Board for reconsideration and variance of affected portions of the Board's decision.

The Court of Queen's Bench in a judgement delivered on June 6, 1987, upheld the Board's determinations on all but one matter, on which it reserved, pending issuance of the Board's reasons.

An appeal taken by the Union from that judgement was dismissed by the Alberta Court of Appeal on June 8, 1988. A subsequent application by the Union for leave to appeal to the Supreme Court of Canada was denied on December 8, 1988.

The matter on which the Court of Queen's Bench reserved judgement on June 6, 1987 was, following issuance of the Board's decision and reasons, argued before the Honourable Mr. Justice E. A. Hutchinson. By way of a judgement issued February 1, 1989, the Court sustained the Employer's position and quashed the Board's determinations.

An appeal from that judgement initiated by the Board and the Union is to be heard in 1989.
(PSERB Ref. 140-063-502 and 105-063-502)

3. The Alberta Union of Provincial Employees,
   Edmonton, Alberta
   (Applicant)
   and
   Her Majesty the Queen in right of the Province of Alberta,
   Edmonton, Alberta
   (Respondent)
   and
   The Public Service Employee Relations Board,
   Edmonton, Alberta
   (Respondent)

   In a decision with reasons issued on December 8, 1987, the Board responded to a joint application by the Union and the Employer relating to the interpretation and application of several provisions in the Public Service Employee Relations Act affecting the bargaining unit status of persons employed by the Crown. The Union applied to the Court of Queen's Bench for an order quashing the Board's decision.

   This action was dismissed in a judgement by the Honourable Madam Justice E.A. McFadyen on August 12, 1988.
   (PSERB Ref. 100-001-502[11])

4. The Alberta Union of Provincial Employees,
   Edmonton, Alberta
   (Applicant)
   and
   Her Majesty the Queen in right of the Province of Alberta,
   Edmonton, Alberta
   (Respondent)
   and
   The Public Service Employee Relations Board,
   Edmonton, Alberta
   (Respondent)

This application for judicial review by the Union relates to a decision and reasons issued by the Public Service Employee Relations Board on August 10, 1987, one in which the Board determined that certain persons engaged by the Crown as "contract teachers" were not employees for the purposes of the Public Service Employee Relations Act.

A judgement dismissing that action was issued by the Court of Queen's Bench of Alberta on December 20, 1988. An appeal from that judgement initiated by the Union is to be heard during 1989.
(PSERB Ref. 100-001-502[12])

5. Her Majesty the Queen in right of the Province of Alberta
   Edmonton, Alberta
   (Applicant)
   and
   The Alberta Union of Provincial Employees,
   Edmonton, Alberta
   (Respondent)
   and
   The Public Service Employee Relations Board,
   Edmonton, Alberta
   (Respondent)

This application for judicial review originates with a lengthy decision and reasons issued by the Public Service Employee Relations Board on February 19, 1989, concerning the implementation of earlier determinations made by the Board as to the bargaining unit status of certain persons employed by the Employer. The action by the Employer seeks to quash portions of the Board's decision that focus on the jurisdiction and remedial authority of the Board, particularly in relation to Section 6 of the Public Service Employee Relations Act.

This action is scheduled for hearing in the Court of Queen's Bench of Alberta in August of 1989.
(PSERB Ref. 100-001-502[13])

ANNUAL STATISTICS AND COMPARATIVE DATA

April 1, 1988, to March 31, 1989

Section of Act	Nature of Application		Disposition 1986/87	1987/88	1988/89
9	Determinations	Granted	2	1	13
		Dismissed	1	4	0
		Withdrawn	1	0	5
		Outstanding	1	11	22
11	Reconsideration	Granted	4	4	2
		Outstanding	0	0	0
		Refused	3	0	2
25	Certification	Granted	2	0	8
		Refused	1	1	2
		Withdrawn	0	0	0
		Outstanding	1	5	0
46	Appointment of Mediator	Granted	3	1	9
		Withdrawn	0	0	0
49	Establish Arbitration Board	Granted	6	4	3
		Refused	2	1	1
		Withdrawn	3	2	1
		Outstanding	0	5	0
52	Appointment of Chairman & Member to Arbitration Board	Granted	5	4	1
		Refused	0	0	0
		Withdrawn	0	0	0
64	Appointment of Adjudicator	Granted	9	30	35
		Withdrawn	4	0	9
		Refused	0	0	0
74	Unfair Practice Complaints	Granted	1	1	1
		Dismissed	1	0	1
		Refused/ Withdrawn	2	2	3
74	Failure to Bargain in Good Faith	Granted	0	0	0
		Refused/ Dismissed	1	0	0
		Withdrawn	1	3	0
90	Successor Trade Union / Employer	Granted	0	0	0
		Dismissed/ Withdrawn	0	1	0

Days of Board Hearings	— 1986/87	27 Days
	— 1987/88	30 Days
	— 1988/89	23 Days
Estimated number of employees affected by Certification	— 1986/87	428
	— 1987/88	NIL
	— 1988/89	1615
Total applications disposed of	— 1986/87	41
	— 1987/88	59
	— 1988/89	70
Total applications outstanding	— 1986/87	2
	— 1987/88	21
	— 1988/89	22

budgetary review

Approved Manpower and Operating Costs

PUBLIC SERVICE EMPLOYEE RELATIONS BOARD

		% Change
1986/87	441,770	+12.6
1987/88	471,730*	+ 6.7*
1988/89	450,687**	- 4.7**

* Includes $106,000 Special Warrant.
** Includes $ 93,950 Special Warrant.

in appreciation

The Board takes this opportunity to publicly express its appreciation to the Honourable David Russell and his Executive Assistant, Mr. Tom McLaren, and to the Honourable Ken Rostad and his Special Assistant, Mr. Craig Krieger, for their assistance and co-operation in facilitating the activities of the Board during the period affected by this report.